

1. CONTRACTING PARTIES. This Contract is between the Utah State Tax Commission, ("Commission"), agency code 120, and the following contractor:

Wenzel Data, Inc.
1950 Northwestern Avenue Ste 102
Stillwater, MN 55082

046140
CONTRACT NUMBER

Steve Bishop 888-292-3396 Ext 13
Contact Person Phone Number

41-1893086 102237A 2043735, 93921 & 92045
Federal Tax ID# Vendor Number Commodity Code(s)

LEGAL STATUS OF CONTRACTOR: For-Profit Corporation

2. GENERAL PURPOSE OF THIS CONTRACT: Tape Back-up Library with Maintenance & Support
3. PROCURMENT: This contract is entered into as a result of the procurement process on bid #GM4006, Requisition # 120 4TM00000007.
4. CONTRACT PERIOD. Effective Date: 10/11/03. Termination Date: 10/10/06, unless terminated early or extended in accordance with the terms and conditions of this Contract. Renewal Options: two one-year.
5. CONTRACT COSTS: Contractor may be paid a maximum of \$50,958.00 for costs authorized by this Contract.
6. ATTACHMENT A: State of Utah, Standard Terms and Conditions as amended
ATTACHMENT B: Utah State Tax Commission Standard Terms and Conditions
ATTACHMENT C: Contractor's Technical Response to GM4006.
ATTACHMENT D: Pricing Schedule A
7. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED:
- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this Contract; and,
 - b. Utah State Procurement Code and Procurement Rules.

IN WITNESS WHEREOF, the parties sign and cause this Agreement to be executed.

Contractor Signature Date

Division Director Date

Contractor Name (Please Print)

Budget Officer Date

Title

Contract Officer Date

Rodney G. Marrelli, Executive Director Date

Director, Division of Purchasing Date

Division of Finance Date



ATTACHMENT A
STATE OF UTAH STANDARD TERMS AND CONDITIONS

AUTHORITY: Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

LAWS AND REGULATIONS: Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

RECORDS ADMINISTRATION: The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow STATE and Federal auditors, and STATE Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

CONFLICT OF INTEREST: CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

CONTRACTOR, AN INDEPENDENT CONTRACTOR: The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.

INDEMNITY CLAUSE: The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

EQUAL OPPORTUNITY CLAUSE: The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

RENEGOTIATION OR MODIFICATIONS: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.

DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential

functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

14. WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
15. PUBLIC INFORMATION: Contractor agrees that the contract will be a public document, as to distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
(Revision date: Apr 24, 2002)

ATTACHMENT B

UTAH STATE TAX COMMISSION CONTRACT STANDARD TERMS AND CONDITIONS

In addition to the State of Utah "Standard Terms and Conditions" (Attachment A) bidders must, by submission of a bid, agree to the specific terms and conditions of the Utah State Tax Commission to be considered for any contract award. The terms and conditions contained herein, as may be modified, shall be made apart thereof any contract awarded on behalf of the Utah State Tax Commission.

1. **Contract Composition.** The composition of this shall include: a) the contract and any amendments to the contract; b) the procurement documents, inclusive of all addenda, attachments, and exhibits, or other applicable procurement documents; c) the awarded contractor's bid or bid; d) all requirements of Utah Code Annotated, the Utah Procurement Rules, and the State Purchasing Policies and Procedures.
2. **Contract Interpretation.** Notwithstanding the provisions of section 18 of these terms and conditions, the order presented in section 1 above shall govern in cases of dispute. In the event of any conflict in the language among any components of the contract, the procurement documents shall govern. The Utah State Tax Commission reserves the right to clarify any contractual relationship in writing and such clarifications will govern in case of conflict with the requirements of the procurement documents. Any ambiguity in the contract shall be construed in favor of the Utah State Tax Commission.
3. **Entire Agreement.** This contract in the incorporated composite form represents the entire agreement between the contractor and the Utah State Tax Commission, and it supercedes all prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof.
4. **Contract Term.** The contract shall begin on the date it is signed by the duly authorized representative of the Utah State Tax Commission and approved by the State of Utah, Department of Administrative Services, Division of Purchasing. The base contract shall be for a period of no more than three years with two one-year renewal options as may be exercised at the discretion of the Utah State Tax Commission.
5. **Change Orders and Modifications.** The Utah State Tax Commission Contract Officer or designee may, at any time, by written order delivered to the contractor at least fifteen days prior to the commencement date of such change and without notice to the sureties, make administrative changes within the general scope of the contract. If any such change causes and increase or decrease in the cost of or time required for the performance of any part of the work under the contract whether changed or not by any such order, an equitable adjustment as mutually determined by the Utah State Tax Commission and the Contractor shall be made in the contract price or delivery schedule or both. Any claim by the Contractor for equitable adjustment under this provision must be asserted in writing to the Utah State Tax Commission within fifteen calendar days from the date of receipt by the Contractor of the notification. Failure to agree to any adjustment shall be considered a dispute within the meaning of the disputes provision of the contract. Nothing contained herein this clause shall in any manner excuse the Contractor from proceeding diligently with the contract as changed or

modified.

6. **Notice of Change.** In the event, at any time during the course of this contract, the Contractor recognizes the need or becomes aware of the need to modify the conditions of this contract, either in scope or cost, the Contractor shall immediately notify the Contract Officer of such need and provide written documentation supporting the need and such documentation shall be in sufficient detail for the Contractor Officer to determine the validity and merit of a change to the contract.
7. **Contractor Declaration.** The Contractor recognizes that the only individual(s) authorized to bind the Utah State Tax Commission to any modification in the scope of work, schedules, increased costs, or other modifications to the contract are the Executive Director, the Contract Officer, and the Purchasing Agents. The Utah State Tax Commission shall not be obligated to the Contractor for any costs incurred by the Contractor for modifications to the contract without the prior written approval of the authorized Utah State Tax Commission staff. Further, the Contractor is aware that no employees or agents of the Utah State Tax Commission, except those aforementioned may authorize reimbursable services or the purchase of goods and the Utah State Tax Commission shall not be liable for unauthorized costs incurred by the Contractor.
8. **Right to Suspend.** If at any time during the contract, the Contract Officer of the Utah State Tax Commission determines that the best interest of the State would be served by temporarily suspending the contract or any part thereof, he shall do so by providing the Contractor with a written notice to that effect. The Contractor, shall immediately upon receipt of such notice, cease all work covered under the contract as directed in the notice for the period of time specified in the notice.
9. **Ownership of Information.** The Utah State Tax Commission shall own and retain unlimited rights to use, disclose, or duplicate all information and data, copyrighted or otherwise, developed, derived, documented, stored, or furnished by the Contractor under the contract. The Contractor expressly agrees not to use data furnished by the Utah State Tax Commission or developed as a result of this contract for independent projects without the prior written permission from the State. In all cases, the provision of Section 35 of these Standard Terms and Conditions shall apply.
10. **Inspection Prior to and During Production/Performance.** The State of Utah, Utah State Tax Commission, Department of Administrative Services, Division of Purchasing, or their authorized representatives shall, at all reasonable times, have the right to enter the Contractor's premises or such other places where responsibilities under the contract are being performed to inspect, monitor, or otherwise evaluate the work being performed. The Contractor and all subcontractors must provide reasonable access to all facilities, all records relating to the contract, and provide assistance to the State representatives.
11. **Warranty of Products/Services.** Notwithstanding prior acceptance by the Utah State Tax Commission of a Contractor-provided deliverable or service, the Contractor shall expressly warrant that all delivered products, documentation, and services are compliant with the terms of this agreement. The Contractor must correct all errors and design deficiencies and replace incorrect or defective documentation. Such corrections and/or replacements must

- occur within the time frame specified in the notice from the Utah State Tax Commission to the Contractor of such deficiencies or within such period as may be necessary to make corrections using all due diligence and dispatch as agreed upon between the Utah State Tax Commission and the Contractor. If the Contractor fails to repair an identified error, deficiency, or defect within such period, the Utah State Tax Commission may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse the Utah State Tax Commission for all costs incurred thereby. Nothing in this provision implies any relief from the imposition of damages for associated deficiencies by the Utah State Tax Commission on the Contractor during the life of the contract and for any warranty period.
12. **Subcontracts.** Suppliers of equipment and routine purchase orders necessary for the performance of contract obligations shall not be considered subcontractors. Any purchase of services by the Contractor wherein the Contractor does not exercise full, complete, and direct control over the performance of the purchased services shall be considered a subcontract. All subcontractors shall require the prior written approval of the Utah State Tax Commission.
13. **Assignment.** The Contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or any right, title, interest therein without prior written consent of the Utah State Tax Commission. The provision includes reassignment of the contract to change in ownership, merger, takeover, etc.
14. **Performance Bond.** A performance bond issued by a reputable surety company authorized to do so and doing business in the State of Utah, in the amount of \$____NA____ conditioned upon the prompt, proper, and efficient performance of the contract may be required at the time of contract execution or at any time during the term of the contract as may be required by the Utah State tax Commission and shall be renewed as necessary so as to remain in force for the full term of the contract. The performance bond shall be forfeited by the Contractor in the event that the Contractor is unable to properly, promptly, and efficiently perform or initiate the contract and/or the contract is terminated by default. The Utah State Tax Commission may seek additional remedies.
15. **Fidelity Bond.** A fidelity bond issued by a reputable surety company authorized to do so and doing business in the State of Utah, in the amount of \$____NA____ may be required at the time of contract execution or at any time during the course of the contract at the Utah State Tax Commission's sole discretion. The bond shall be used to insure the State of Utah against loss through or from any act of omission or commission by the Contractor or employees of the Contractor.
16. **Financial Accounting.** The Contractor shall be charged with presumptive knowledge of the policies and requirements set forth in State of Utah Administrative Rule §R33-3-8 concerning cost or pricing data and analysis including and specifically §R33-3-808.
17. **Conformance with State Regulations.** The Contractor shall be required to conform to all State laws, rules, and policies as they exist or as may be amended from time to time. In the event that the Contractor may request the Utah State Tax Commission to issue policy determinations or operating guidelines required for proper performance of the contract, the Utah State Tax Commission shall do so in a timely manner, and the Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines, and shall incur no liability in doing so unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.
18. **Waiver.** No covenant, condition, duty, obligation, or undertaking contained in or made a part of this contract will be waived except by written agreement of the parties, and forbearance of indulgence in any of the form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or the undertaking to be kept, performed, or discharged by the party to which the same may apply, and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any forbearance or indulgence.
19. **Disputes.** Any dispute concerning a question of fact arising under the contract which is not disposed of by agreement shall be decided by the Utah State Tax Commission Contract Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contract Officer shall be final and conclusive unless within five working days from the date of receipt of such copy the Contractor mails or otherwise furnishes to the State of Utah, Chief Procurement Officer, a written appeal addressed to the Office of the Chief Procurement Officer, Division of Purchasing, Department of Administrative Services, 3150 State Office Building, Capitol Hill, Salt Lake City, Utah 84114. The appeals process and remedies shall be governed in accordance with Utah Code Annotated §63-56-46 - 63-56-64. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision.
20. **Jurisdiction.** The laws of the State of Utah shall govern all aspects of the contract. Any lawsuit or legal action in which the Utah State Tax Commission is a party, arising out of or on account of the contract or the relationship of the parties must be brought in the courts of the State of Utah, and venue shall be in Salt Lake County, Utah. Any subcontracts of the Contractor relating to the work performed under this contract must contain this or a similar provision.
21. **Contract Administration.** The contract shall be administered for the State of Utah by the Utah State Tax Commission. The Executive Director or his designee shall be the final authority to act for the Utah State Tax Commission under the contract, including resolution of contractual matters. Any direction by the Executive Director or designee shall be binding on the Contractor. Whenever the Utah State Tax Commission is required by the terms of the contract to provide written notice to the Contractor, such notice shall be signed by the Executive Director or designee. The Executive Director or designee shall approve all amendments and changes and all invoices for payment to the Contractor, sign all notices regarding performance and potential damages issued throughout the life of the contract, and sign all other documents requiring formal approval by the Utah State Tax Commission. For purposes of this contract, the Contract Officer shall act as the designee.
22. **Notices.** Wherever under this contract one party is required to give notice to the other, such notice shall be deemed given upon delivery if delivered by hand or three days after posting if sent by registered or certified-mail, return receipt requested. Notices to the Utah State Tax Commission shall be addressed as follows: Mr. Paul F. Mash, Contract Officer, Utah State Tax Commission, 210 North 1950 West, Salt Lake City, Utah 84134. Said notices shall become effective on the date of receipt or the date specified within the notice, whichever comes later. Either party may change its address for notification purposes by mailing a notice stating the change and setting forth the new address, which shall be effective on the tenth day following receipt.
23. **Award of Related Contracts.** The Utah State Tax

Commission may undertake or award supplemental or successor contracts for work related to this contract or any portion thereof. The Contractor shall be bound and obligated to cooperate fully with such other contractors and the Utah State Tax Commission in all cases. All subcontractors will be required to abide by this provision as a condition of the contract between the subcontractor and the Contractor.

24. **Patent or Copyright Infringement.** The Contractor, at its expense, will defend any claim or suit which may be brought against the State of Utah or the Utah State Tax Commission for the infringement of United States patents or copyrights arising from the Contractor's or the Utah State Tax Commission's use of any equipment, materials, software, products, or information prepared or developed in connection with the performance of the contract in any suit, and will satisfy any final judgment for such infringement whether it is resolved by settlement or judgment. If principles of governmental or public law are involved, the State of Utah and/or the Utah State Tax Commission may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor's without the Contractor's written consent. If, in the Contractor's opinion, the equipment, materials, or information mentioned in the preceding paragraphs are likely to or become the subject of a claim of infringement, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Utah State Tax Commission's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's option and expense, obtain the right for the Utah State Tax Commission to continue the use of such equipment, materials, and information. In the event of equipment and/or software substitution, the Utah State Tax Commission must protect its interests in data used by such equipment or software through recovery or conversion of such data to other approved equipment or software. The Contractor shall, in any such suit, satisfy any damages for infringement assessed against the State of Utah, the Utah State Tax Commission, its divisions, officers, employees, or agents resulting from said lawsuit, whether it is resolved by settlement or judgment.
25. **Federal, State, and Local Taxes.** In addition to the provision of section 13 of the State of Utah Standard Terms and Conditions the Contractor shall be responsible to pay all taxes lawfully imposed upon it with respect to this contract or any product delivered or developed in accordance herewith. The Utah State Tax Commission makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.
26. **Publicity.** Any publicity given to the Utah State Tax Commission and/or the State of Utah for products or services provided herein, including but not limited to, notices, information, pamphlets, press releases, research, reports, signage, and similar public notices prepared by or on behalf of the Contractor shall identify the Utah State Tax Commission as sponsoring agency and shall not be released prior to written approval from the Utah State Tax Commission.
27. **Termination of the Contract for Default.** The State may terminate this contract in whole, or in part, whenever the Utah State Tax Commission determines that the Contractor or subcontractor has failed to satisfactorily perform its contract duties and responsibilities and is unable to cure such failure within a reasonable period of time, as specified in writing by the Contract Officer, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as a Termination for Default. Upon determination by the Utah State Tax Commission that the Contractor has failed to satisfactorily perform its contracted duties and

responsibilities, or the hardware is unacceptable, the Contract Officer shall notify the Contractor of the failure and establish a reasonable time period in which to cure such failure. If the Contractor is unable to cure the failure within the specified time period, the Contract Officer will notify the Contractor that the contract in full or in part has been terminated for default. If, after notice of termination for default, it is determined by the State or a court that the Contractor was not in default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without error or negligence of the Contractor or any of its subcontractors, the notice of termination shall be deemed to have been issued as a termination for the convenience of the State, and the rights and obligations of the parties shall be governed accordingly. In the event of termination for default, in full or in part as provided by this clause, the Utah State Tax Commission may procure, upon such terms and in such manner as the State may deem appropriate, services similar to those terminated, and the Contractor shall be liable to the State of Utah for any excess costs for such similar service and all other damages allowed by law. In addition, the Contractor shall be liable to the State for administrative costs incurred by the Utah State Tax Commission in procuring such similar services. Payment for such costs may be assessed against the Contractor's performance bond. In the event of termination for default, the Contractor shall be paid for those deliverables, which the Contractor has delivered to the State. Payments for completed deliverables, delivered to and approved by the Utah State Tax Commission shall be at the contract price less any amounts for assessed damages. Payment for partially completed deliverables, delivered to and not yet approved by the Utah State Tax Commission shall be an amount determined by the State, taking into consideration any assessed damages, not to exceed the cost of that deliverable. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract. If the contract is so terminated, there will be no charge to the Utah State Tax Commission or the State for de-installation or removal of any tools, products, or personnel provided by the Contractor.

28. **Termination of the Contract for Convenience.** The State may terminate performance of work under the contract in whole or in part whenever for any reason the Utah State Tax Commission shall determine that such termination is in the best interest of the State of Utah. In the event that the Utah State Tax Commission elects to terminate the contract pursuant to this provision, the Contract Officer shall notify the Contractor of the basis and extent of termination. Termination shall be effective on the date specified in the notice, and the Contractor shall comply with all specified provisions of the termination notice. Upon receipt of notice of termination for convenience, the Contractor shall be paid the following: a) at the contract price(s) for completed deliverables delivered to and accepted by the Utah State Tax Commission for which they have not previously been paid, taking into consideration any assessed damages; b) at a reasonable price negotiated between the Contractor and the Utah State Tax Commission for partially completed deliverables less any amounts for assessed damages, with the amount for each deliverable not to exceed the cost of that deliverable specified in the contract. In the event of a failure to agree upon a reasonable price, the matter shall be resolved in accordance with the Disputes provisions of the contract.
29. **Termination of the Contract for Unavailability of Funds.** It is understood and agreed by the parties hereto that all obligations of the Utah State Tax Commission, including the

continuance of payments hereunder, are contingent upon the availability and continued appropriation of State funds, and in no event shall the Utah State Tax Commission be liable for any payments hereunder in excess of such available appropriated funds. In the event that the amount of any available or appropriated funds provided by the State for the purchase of services hereunder shall be reduced, terminated, or shall not be continued at an aggregate level sufficient to allow for the purchase of the specified services to be performed hereunder for any reason whatsoever, the Contract Officer shall notify the Contractor of such reduction of funds available and the Utah State Tax Commission shall be entitled to reduce the Utah State Tax Commission's commitment hereunder or to terminate the contract as it deems necessary.

- 30. Termination of the Contract for Financial Instability.** In the event that the Contractor becomes financially unstable to the point of threatening the ability of the Utah State Tax Commission to obtain the services or product provided for under the contract, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets, the State may, at its option, immediately terminate this contract. In the event the Utah State Tax Commission elects to terminate the contract under this provision, it shall do so by the Contract Officer sending notice of termination to the Contractor specifying the date of termination. In the event of the filing of a petition in bankruptcy by or against a principal subcontractor, the Contractor shall immediately so advise the Utah State Tax Commission. The Contractor shall ensure that all tasks related to the subcontract are performed in accordance with the terms of the contract.

- 31. Procedure on Termination.** Upon delivery by certified mail to the Contractor of a Notice of Termination, specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall: a) stop work under the contract on the date specified and to the extent specified in the Notice of Termination; b) place no further orders or subcontracts for materials, paper, services, or facilities; c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; d) assign to the State in the manner and to the extent directed by the Contract Officer all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the State shall have the right. In its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; e) complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; f) take such action as may be necessary, or as the Contract Officer may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor, and in which the Utah State Tax Commission has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations, notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

- 32. Termination Claims.** After receipt of a Notice of Termination, the Contractor shall submit to the Contract Officer any termination claim in the form and with the certification prescribed by the Contract Officer. Such claim shall be submitted promptly but in no event later than three months from the effective date of termination, unless one or more extensions in writing are granted by the Contract Officer within such three-month period or authorized extension thereof. However, if the Contract Officer

determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such three-month period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contract Officer may, subject to any review required by the State procedures in effect as of the date of execution of the contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon cause to be paid to the Contractor the amount so determined. In no case shall the Contractor's termination claims include any claim for unrealized anticipatory profits. Subject to the provisions of the previous paragraph and subject to any review required by the State procedures in effect as of the date of the execution of the contract, the Contractor and the Utah State Tax Commission may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this article. The contract shall be amended accordingly. In the event of the failure of the Contractor and the Utah State Tax Commission to agree in whole or in part as to the amounts with respect to costs to be paid to the Contractor in connection with the total or partial termination of work pursuant to this article, the Contract Officer shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall cause to be paid to the Contractor the amount so determined. The Contractor shall have the right of appeal, as stated under the Disputes provisions, from any such determination made by the Utah State Tax Commission.

- 33. Damages.** (Damages shall only apply if set forth in the procurement documents) Liquidated Damages - The purpose of liquidated damages is to ensure adherence to the performance requirements in the contract. No punitive intent is inherent. It is agreed by the Utah State Tax Commission and the Contractor that, in the event of a failure to meet the performance requirements contained in this contract, damage shall be sustained by the State and that it will be impractical and extremely difficult to ascertain and determine actual damages which the State will sustain in the event of and by reason of such failure; and it is therefore agreed that the Contractor will pay the State for such failures at the sole discretion of the State according to the conditions set forth in the procurement documents. Consequential Damages - It is agreed by the Utah State Tax Commission and the Contractor that, in the event of a failure to meet certain performance requirements contained in this contract damage shall be sustained by the State and the Contractor shall pay the State its actual damages.

- 34. Warranty Against Brokers' Fees.** The Contractor shall warrant that it has not employed any company or person other than a bona fide employee working solely for the Contractor or a company regularly employed as its marketing agent to solicit or secure this contract. The Contractor shall further warrant that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Contractor or a company regularly employed by the Contractor as its marketing agent any fee, commission, percentage, brokerage fee, emolument, gifts, or any other consideration contingent upon or resulting from the award of the contract. For breach or violation of the warranty, the Utah State Tax Commission shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise received the full amount of such fee, commission, percentage, brokerage fee, emolument, gifts, or contingent fees.

- 35. Gratuities.** The Contractor shall not at any time during the period of this contract permit any individual employed by the State of Utah, or appointed or elected officials of the State of

Utah to gain a share of the contract or to benefit therefrom directly or indirectly because of a financial interest in the contract, or any subcontractor, or any affiliate of any subcontractor. A violation of this provision shall constitute additional grounds for immediate termination of the contract. Furthermore, such violation shall be submitted to the Utah State Attorney General for whatever further action may be deemed feasible and/or appropriate.

36. **Confidentiality of Taxpayer Information.** In performance of the contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements: a) all work shall be performed under the supervision of the Contractor or the Contractor's employees; b) any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor shall be prohibited; c) all returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output shall be given the same level of protection as required for the source material; d) The Contractor certifies that the data processed during the performance of this Contract shall be completely purged from all data storage components of its computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures; e) Any intermediate hard copy printout which may result during the processing of IRS data shall be given to the Commission or its designee. When this is not possible, the Contractor will be responsible for the destruction of any intermediate hard copy printouts, and shall provide the Commission or its designee with a statement containing the date of destruction, description of material destroyed, and the method used; f) no work involving information furnished under this Contract will be subcontracted without specific approval of the Commission; g) the Contractor will maintain a list of employees authorized access. Such list will be provided to the Commission and, upon request, the IRS reviewing office; h) the Commission will have the right to void the Contract if the Contractor fails to provide the safeguards described above. Criminal/Civil Sanctions: a) each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such office and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n); b) additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1),

which is made applicable to Contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Additionally, in performance of the contract, the Contractor agrees to comply with IRC 6103, IRC 7213 and IRC 7431.

37. **Confidential State of Utah Data.** In addition to the requirements of number 36, The Contractor agrees that some State of Utah data is confidential. There will be times that interactions with customers and their data (electronic, written, verbal, etc.) are necessary in order to provide the services required of this contract. You and your agents must hold data, obtained by accident, design, or in the course of completing the necessary work, in strictest confidence. You and your agents must not release or disclose in whole or in part any State of Utah data. All personnel must complete and sign a Non-Disclosure Statement (provided by the State of Utah at the time of award) prior to providing service under this contract.

Utah State Tax Commission
Tape Library

July, 2003

ATTACHMENT C**CHECKLIST TECHNICAL PRODUCT REQUIREMENTS**

Please indicate whether you agree (Yes) or disagree (No) with the following mandatory provisions of this Invitation to Bid. If you disagree, attach documentation explaining your disagreement. Any (No) answer without satisfactory documentation may eliminate your proposal from further consideration.

Bidder Name: Wm. J. Dale Inc.

Compliance with Section 2.0 - Technical Product Requirements

YES	NO	TOPIC
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.1 The product must be compatible with Veritas NetBackup Software version 3.5 and higher.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.2 The product must be configured with 4 SDLT 320 drives.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.3 The must have a minimum of 80 cartridge slots.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.4 The product must be upgradeable to allow for connection to a fibre-channel SAN.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.5 Local service must be available. ¹
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.6 The warranty period on the product must be a minimum of 3 years. ²
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.7 The product must be able to be rack mounted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2.2.8 The product must be functionally equivalent to the StorageTek L80.

¹ "Service" must include 2X7 (2 shifts - day and evening coverage Monday through Sunday, including holidays) a 4 hour response time from the time the contractor is notified that a service request is required.

² Warranty - The manufacturer's original warranty must be passed on to the Agency in its entirety.

MAIL TO:

Invitation to Bid

Solicitation Number: GM4006

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
<http://purchasing.utah.gov>



Due Date: 08/19/03 at 3:00 P.M.

Date Sent: August 1, 2003

Goods and services to be
purchased:

MULTI-STEP BID PROCESS TO PROVIDE A NEW STORAGE TAPE LIBRARY FOR THE UTAH STATE
TAX COMMISSION

Please complete

Company Name <i>Wenzel Data Inc.</i>		Federal Tax Identification Number <i>41-1893068</i>	
Ordering Address <i>1950 Northwestern Ave #102</i>	City <i>Stillwater</i>	State <i>MN</i>	Zip Code <i>55082</i>
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person <i>Steven Bishop</i>		
Telephone Number (include area code) <i>651-351-7386 x 13</i>	Fax Number (include area code) <i>651-351-7460</i>		
Company's Internet Web Address <i>www.wenzeldata.com</i>	Email Address <i>Steven@wenzeldata.com</i>		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums) <i>7-10 days</i>		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes _____ No <u>X</u>. If no, enter where produced, etc. <u>MN, CA</u></p>			
Offeror's Authorized Representative's Signature <i>Steven Bishop</i>		Date <i>8-12-03</i>	
Type or Print Name <i>Steven Bishop</i>		Position or Title <i>Sales Manager</i>	

ATTACHMENT D

PRICING SCHEDULE A

Bidder Name: _____

1. Provide a price bid for the products identified in your technical offer. This price bid must also include the three years' warranty maintenance & support fees.

Price for proposed product with three-year warranty:

\$ 44,700⁰⁰

Price for maintenance and support fees not covered by the warranty for years 1, 2 and 3 of product ownership:

\$ 6258⁰⁰

2. Provide pricing for maintenance and support fees, after the warranty period, for the fourth and fifth year of product ownership.

Maintenance and Support Fees – Year 4 of product ownership

\$ 2086⁰⁰

Maintenance and Support Fees – Year 5 of product ownership

\$ 2086⁰⁰

3. Trade-in credit and/or rebate if offered:

- \$ _____

4. Total Price Bid³

\$ 55,130⁰⁰

³ To be used for evaluative purposes.



Wenzel Data, Inc.
1950 Northwestern Avenue
Suite 102
Stillwater, MN 55082
T: 888-292-3396 Ext 13

Company Information

Quote By

Quote Issued: 08/13/03

Manager: Steve Bishop

Phone: 888-292-3396

Fax: 651-351-7460

Authorized by: SB

Company Name: Utah Tax Commission

Contact: Michael Rigby

Address: 210 North 1950 West

City: Salt Lake City

State: UT

Phone: (801)297-2720

Zip: 84134

Fax: 0

Notes:
Sincerely, Steve Bishop
This quote is valid for 30 days from issue date.

Wenzel Data, Inc.

Distributors of Data Storage Peripherals and Media